Submitted 2-77. Judge Davis
March
82.

Honorable
discharge after
desertion

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 177.

THE UNITED STATES, APPELLANTS,

vs.

JOHN LANDERS.

APPEAL FROM THE COURT OF CLAIMS.

FILED MAY 14, 1874.

Remand —

Field

SUPREME COURT OF THE UNITED STATES.

No. 177.

THE UNITED STATES, APPELLANTS,

vs.

JOHN LANDERS.

APPEAL FROM THE COURT OF CLAIMS.

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1 United States Court of Claims.

JOHN LANDERS
vs.
THE UNITED STATES. } 2951. Filed Nov. 8, 1867.

To the honorable the judges of the Court of Claims:

The petition of John Landers, of the county of Benton, and State of Arkansas, respectfully represents:

That, on the first day of January, 1864, at Clarksville, in the State of Arkansas, your petitioner was duly enrolled and mustered into the military service of the United States, as a private in Company B, of the Second Regiment Arkansas Volunteers, to serve three years or during the war.

That he served and performed the duties of a private soldier of the United States military forces from the said first day of January, 1864, until the eighth day of August, 1865, when he was honorably discharged from said military service at Clarksville, Arkansas, "by reason of expiration of service-term, under provisions of War Department Circular 30, current series, Adjutant-General's Office."

That he has received no pay or bounty from the United States on account of his said enrollment and service.

That there is due him from the United States the sum of two hundred and ninety-six dollars and twenty-five cents, as pay of a private soldier during the time aforesaid, and the further sum of three hundred dollars, as bounty money, under the joint resolution of Congress, approved January 13, 1864—making in all the sum of five hundred and ninety-six dollars and twenty-five cents.

That your petitioner has applied to the Pay Department of the United States Army for payment of the amount so due, but without success—payment of the same, or any part thereof, having been refused by said Department.

That your petitioner has always borne true allegiance to the Government of the United States, and has not in any way aided, abetted, or given encouragement to the rebellion against said Government; and, also,

That your petitioner is a citizen of the United States.

2 He therefore claims that there is due him from the United States the sum of five hundred and ninety-six dollars and twenty-five cents; and for that amount he respectfully prays judgment.

CHIPMAN & HOSMER,
Attorneys for Claimant.

STATE OF ARKANSAS,
County of Washington, ss:

John Landers, being duly sworn, says that he is the petitioner mentioned in the above and foregoing petition; and that no assignment or transfer of the claim therein mentioned, or any part thereof, or any interest therein, has ever been made to any person whomsoever; and he further says that he is justly entitled to the amount in said petition claimed from the United States, after allowing all just credits and offsets; and that he verily believes the facts, as stated in said petition, are true.

his
JOHN + LANDERS.
mark.

Sworn and subscribed before me this fourth day of October, 1867.
[L. S.] P. R. SMITH,
Clerk Circuit Court.

3 In the United States Court of Claims, December term, A. D. 1868.

JOHN LANDERS
vs.
THE UNITED STATES. } No. 2951.

And the said defendants, by their Attorney-General, come and make answer to the petition of the claimant herein; and, not confessing the same, or any part thereof, deny each and every the allegations therein contained, and call for strict proof of the same.

And as to so much of the said petition as sets forth and avers that the said United States are indebted to the said claimant in the sum of five hundred and ninety-six dollars and twenty-five cents, the said defendants say that they are not indebted to the said claimant in the said sum of money, nor any part thereof.

And as to so much of the said petition as avers that the said claimant his at all times borne true faith and allegiance to the Government of the United States, and never voluntarily aided, abetted, or given encouragement to rebellion against the said Government, the said defendants deny the said allegation.

T. LYLE DICKEY,
Assistant Attorney-General.

Filed December 21, 1868.

4 United States Court of Claims.

JOHN LANDERS
vs.
THE UNITED STATES. } No. 2951.

And the said defendants, by their Attorney-General, now come, and, by leave of the court, further say that said claimant, at the time of his discharge, was, and still is, indebted to said defendants as follows:

For ordnance and ordnance-stores furnished him by said defendants $25 14
For clothing so furnished him $62 51

Which sums said defendants claim to be set-off against any claim or recovery of said claimant.

T. LYLE DICKEY,
Asst. Atty. General.

Filed Nov. 10, 1869.

5 In the Court of Claims.

JOHN LANDERS
vs.
THE UNITED STATES. } 2951.

At a Court of Claims held at the Capitol, in the city of Washington, the 12th day of January, A. D. 1874, judgment was ordered to be entered up as follows:

The court, upon due consideration of the premises, find in favor of the claimant, and do order, adjudge, and decree that the said John Landers, claimant, have and recover of and from the United States the sum of five hundred and eight dollars and twenty cents, ($508.20.)

By the court.

A true copy of record.

6 In the Court of Claims of the United States, Dec. term, 1873.

JOHN LANDERS
vs.
THE UNITED STATES. } No. 2951.

From the judgment rendered in the above-entitled cause on January 12, 1874, in favor of the claimant, the defendants, by their Attorney-General, on the 6th day of April, 1874, make application for and give notice of an appeal to the Supreme Court of the United States, the judgment in said cause being one which will affect a class of cases.

JOHN GOFORTH,
Asst. Atty. General.

Filed April 6, 1874.

It is hereby certified that the judgment in the above cause is one which will affect a class of cases.

C. D. DRAKE, *C. J.*

Ordered that the appeal be allowed as prayed for.
By the court.
April 6, 1874.

7 United States Court of Claims.

JOHN LANDERS
vs.
THE UNITED STATES.

FACTS.

The petitioner was a private soldier in the Army, and claims pay and bounty, and the court finds the facts to be:

That the petitioner enlisted in the Army for three years, was enrolled on the 1st January, 1864, in Company B, Second Arkansas Volunteers, for a service of three years; he was mustered into the service January 16, 1864, to take effect from date of enrollment; he deserted November 12, 1864, and was arrested June 2, 1865; he was restored to duty with the loss of all pay and allowances due or to become due during the term of his enlistment; he was honorably discharged on the 8th of August, 1865. There was due him at the time of his discharge—

As pay		$296 25
As bounty money		300 00
Making		596 25

And there was due from him—

For ordnance and ordnance stores	$25 14	
For clothing	62 51	
		87 65
Balance		508 60

And the court find as conclusions of law—

That the said Landers' honorable discharge from the military service of the United States purged him of the offence of desertion and removed all impediment to his recovery of his pay and bounty.

That said Landers' case is not within the joint resolution of March 1, 1870. (16 Stat., 370.)

LORING, J., delivered the opinion of the court:

In the case of the United States vs. Kelly, the Supreme Court decided that "the honorable discharge of a deserter was a formal final judgment passed by the Government upon the entire military record of the soldier, and an authoritative declaration by it that he had left the service in a status of honor," &c., and amounted of itself to the removal of any charge or impediment in the way of receiving bounty.

This in effect holds that the offense of desertion is purged by an honorable discharge, and all its consequences annulled. This case is like Kelly's case, except that the soldier then belonged to the Regular Army, and the petitioner belonged to the volunteers. And the joint resolution of March 1, 1870, (16 Stat., 370,) enacts, "That the moneys withheld because of the desertion of any person from the volunteer forces of the United States who is borne on the rolls as a deserter, shall not be paid to him except the record shall have been cancelled on the sole ground that such record had been made erroneously and contrary to the facts, but such money shall be and remain the property of the National Asylum for Disabled Volunteer Soldiers for the support of its beneficiaries.

The defendants claim that the petitioner is within this resolution, and his case is within its words. But the resolution is highly penal, and cannot have a retroactive effect beyond that which its words absolutely require. Now the petitioner had been honorably discharged three years before the passage of the resolution, and he cannot be affected by a law not existing then, when his contract ceased and the rights of the parties to it were fixed.

We hold, therefore, he is entitled to the balance of his pay and bounty, amounting to the sum of $508.20.

Judge Nott did not sit in this case, and took no part in the decision.

In the Court of Claims.

JOHN LANDERS *vs.* THE UNITED STATES. } No. 2951.

I, John Randolph, assistant clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, and the final judgment of the court thereon, of the application of the Attorney-General for the defendants for the allowance of an appeal, as filed in the clerk's office April 6, 1874, and of the order of the court of April 6, 1874, allowing the same, of the findings of fact by the court and conclusions of law thereon, on which the court founded its judgment, and of the opinion of the court.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Washington this eleventh day of May, A. D. 1874.

[SEAL.] JOHN RANDOLPH,
Asst. Clerk Court of Claims.

(Indorsement on cover:) Court of Claims. No. 177. The United States, appellants, vs. John Landers. Filed 14 May, 1874.

In the Supreme Court of the United States.

OCTOBER TERM, 1875.

THE UNITED STATES, APPELLANTS,
vs.
JOHN LANDERS.
} No. 177.

APPEAL FROM THE COURT OF CLAIMS.

Brief for the United States.

In the Supreme Court of the United States.

OCTOBER TERM, 1875.

THE UNITED STATES, APPELLANTS,
vs.
JOHN LANDERS. } No. 177.

APPEAL FROM THE COURT OF CLAIMS.

Brief for the United States.

STATEMENT OF THE CASE.

John Landers was mustered as a private into the military service of the United States on the 16th day of January, 1864, for three years, or during the war. November 12, 1864, he deserted. He was arrested June 2, 1865, restored to duty *with the loss of all pay and allowances due or to become due during the term of his enlistment*, and honorably discharged August 8, 1865, when there was due him $508.60 unless forfeited by such desertion. The Court of Claims held that the honorable discharge purged the offense, and that the petitioner was entitled to the sum aforesaid, his case

not coming within the joint resolution of March 1, 1870, (16 Stats., 370.) The United States appealed. (Record, 3.)

BRIEF.

I.

The Court of Claims rests its decision of this case upon that of Kelly, in 15 Wallace, 34, while it is widely variant from it in fact and law. Kelly enlisted February 24, 1864, deserted on account of his mother's sickness, October 3, 1865, and returned voluntarily to duty a few weeks later, and subsequently made up the time lost by his absence, thus performing the condition-precedent to his obtaining an honorable discharge. The war had virtually closed when Kelly deserted, and, in view of the inducing cause and of his voluntary return, this light condition was imposed. Landers deserted November 12, 1864, while the war was still raging, and was only returned to his company under arrest June 2, 1865, after the fighting was all over. Therefore the more severe condition or punishment of a forfeiture of all pay and allowances was imposed, subject to which the discharge was given him.

The Court of Claims erroneously assumes in its opinion (Record, 4) that this court held in Kelly's case that the offense of desertion was purged by the honorable discharge. Such is not the case. Power to try the soldier, or further to punish him for the desertion, is lost by his restoration to duty; and thenceforth there is nothing to be purged; *but as part and condition of that restoration "by competent authority" there may be decreed a forfeiture of pay and allowances.* (Army Reg., p. 159, 160; R. S.,

4749; Judge Ad. Gen. Holt's op., p. 139, §§ 7 and 9; 136, § 1.)

If the restoration be, in effect, a pardon, (as treated by the Court of Claims), then it may be granted upon condition by the authority competent to grant it at all. (Ex p. Wells, 18 Howard, 307, 314.)

II.

The resolve approved March 1, 1870, No. 18, § 2, directs that "moneys withheld because of the desertion of any person from the *volunteer* forces of the United States," shall not be paid to him unless the record of desertion "shall have been canceled on the *sole* ground that such record had been made erroneously and contrary to the facts." (16 Stats., 370.)

As Mr. Justice Swayne remarked the other day, in the opinion in Raymond *v.* Thomas, "the *meaning* of the legislature is the law," as this and other courts have decided over and over again. However much text-writers may philosophize, and courts may refine about it, Congress has *power* to pass a law that shall have a retroactive effect; the only question is that of intent, whether or not such intention is sufficiently expressed. (Calder *v.* Bull, 3 Dallas, 391; Satterlee *v.* Matthewson, 2 Peters, 380; Watson *v.* Mercer, 8 Peters, 110; Moon *v.* Durden, 2 Exch., 22; Kelley *v.* Kilso, 5 Ohio St., 198; Butler *v.* Toledo, 5 Ohio St., 231; Scott *v.* Smart, 1 Mich., 295; Baugher *v.* Nelson, 9 Gill., 299.)

We think a perusal of this statute in the light of history and surrounding circumstances will satisfy the mind of each member of the court that Congress *in-*

tended its provisions to apply to moneys then withheld; and if each individual be thus satisfied, the court cannot otherwise declare.

EDWIN B. SMITH,
Assistant Attorney-General.

Supreme Court of the United States.

OCTOBER TERM, 1875. No. 177.

THE UNITED STATES, APPELLANT,

vs.

JOHN LANDERS.

Brief for Plaintiff and Appellee, John Landers.

A private soldier, a volunteer, named John Landers, sues the United States to recover for services and bounty due to him, found by the lower court to amount, on a settlement of account, to $508.60.

The United States pleaded the general issue, and an offset for $87.65, which was allowed by the judgment.

But in the argument two grounds were relied on by the Government to entirely defeat this action:

First. That the soldier having deserted November 12, 1864, and being afterwards arrested June 2, 1865, and *restored to duty, with the loss of all pay and allowances due or to become due during the term of his enlistment,* had lost all right to recover from the defendants; and the bounty and pay of the soldier remained forfeited to the United States; and, further, that the *honorable discharge* of Landers from the military service of the United States did not purge him of the offense of desertion, and did not remove all impediment to the recovery of his pay and bounty.

Second. That Landers was precluded from a recovery by the provisions of section second, of the joint resolution of March 1, 1870. (16, S. L., 370.)

The Court of Claims held that the honorable discharge of the soldier purged the offense of desertion, and annulled all its consequences. Further, that the joint resolution relied on by the United States was highly penal, and not applicable to this case—unless a retroactive effect be given to the law beyond that which its words absolutely require. It is admitted by the court that the case is within the words of the act; but that Landers, having been honorably discharged *three years before its passage*, cannot be affected by it.

The case is reported in 9 Ct. Claims R., p. 242.

Argument.

The plain and definite language adopted by this court in Kelly's case (15 Wallace, 36), quoted from Joseph Holt, and again quoted in the opinion of the Court of Claims, establishes the *presumptio juris et de jure of the thing adjudged;* that is, the honorable discharge is a *formal, final judgment* in favor of the soldier upon his entire military record. This discharge cannot be impeached collaterally; nor can any officer of the pay department, no matter how much his "nature's plague" may be "to spy into abuses," disregard its contents, or refuse to give it its legal effect.

The untenable ground is taken by the Government that the "honorable discharge" has its legal effect only in case of *a soldier of the regular army*, not in the case of *a volunteer*. But the establishment of this distinction would be suicidal to the United States. The existence of a republic can never depend upon its regular army, but must, *ex necessitate*, always depend on its volunteers. Constitution, art. 1, sec. 8, par. 15.

And in making these distinctions "we need to be very wary, for this caveat the law giveth *ubi lex non distinguit nec nos distinguere debemus*, and certainly *lex non distinguit*, but where *omnia membra dividentia* are to be found out and proved by the law itself." Calvin's case, 7 Reports, 10.

It is quite clear that no true distinction can be drawn by a decision in this case between a volunteer and a soldier in the regular army as to the operation and effect of an "honorable discharge." The effect of *res judicata* is alike for all classes and conditions of suitors, and is always *a truth. Res judicata pro veritate accipitur.* So too is the effect of an "honorable discharge." It is alike for all classes and conditions of soldiers. It produces the same result, so far as the Government is concerned, in the case of a guerilla or a spy as in the case of a soldier of the regular army or of a volunteer.

And on the second objection to Lander's recovery herein, the arguments of the Court of Claims will be sufficiently satisfactory to the most timorous jurist. *Nec enim placet Janus in legibus.* The vested right in Landers to pay and bounty when he received his "*honorable discharge*," on August 8, 1865, could not be disturbed by any *subsequent* legislation.

We ask for an affirmance of the judgment.

Respectfully submitted,

CHIPMAN & HOSMER,
DURANT & HORNOR,
Attorneys for Appellee.

WASHINGTON, D. C., *August* 19, 1875.